IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3572 of 1996

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AAGMESHBEN PAULBHAI CHRISTIAN

Versus

DY.POLICE COMMISSIONER

Appearance:

1. Special Civil Application No. 3572 of 1996

MR DR BHATT for Petitioner No. 1

Mr. H.M. Prachchhak AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 23/12/2004

ORAL JUDGEMENT

1. In the present petition under Article 226 of the Constitution of India, the petitioner has challenged the

order dated 30th January 1996 passed by the respondent No.1, whereby, the petitioner was asked to vacate the residential quarter allotted to her, on the ground that the behaviour of the petitioner was of unbecoming of a member of the Disciplinary Force, as she was found indulging into harassing the neighbours. The impugned order is challenged on the ground that, though a stigma is attached by the impugned order with regard to the conduct of the petitioner, no enquiry was held as envisaged under the Departmental Enquiry Rules and the impugned order came to be passed in breach of principles of natural justice. According to the petitioner, the imputations levelled in the impugned order are not correct and the order is a clear case of no evidence.

2. The learned Assistant Government Pleader, Mr. H.M.Prachchhak, appearing for the respondents, has submitted that, after the impugned order dated 30th January 1996 was passed, the petitioner had made a detailed representation dated 3rd February 1996 and, thereafter, an enquiry was entrusted to Amraiwadi Police Station and statements of the neighbours of the petitioner were recorded. According to learned Assistant Government Pleader, Mr. H.M.Prachchhak, the procedure followed by the respondents is just and proper and it cannot be said that the order outlining the petitioner is in any manner unjust, unreasonable or arbitrary and, therefore, no interference is called for by this Court in exercise of power under Article 226 of the Constitution of India.

3. Having heard the learned advocates for the parties and having gone through the record of the case, in my view, there is nothing on record even remotely to suggest that any opportunity of hearing was given to the petitioner, or a notice to show cause was ever given to the petitioner. Admittedly, no fulfledged enquiry was held by the respondents. Fairness in the matter of administration, at least, requires that a woman police constable belonging to a minority community, who was provided with a quarter for her accommodation, cannot be ousted without following procedure of law. Not only that, the enquiry, which was initiated by Amraiwadi Police Station, was subsequent to passing of the order dated 30th January 1996 and, after recording the statements in the year 1996-1997, no further action is taken. There is nothing on record, which may suggest that, subsequent to passing of the order dated 30th January 1996, the petitioner has continued to misbehave in the same fashion as alleged in the impugned order. Therefore, the impugned order dated 30th January 1996 is

absolutely indefensible and is required to be quashed and set aside.

4. It may be noted that, by the interim order dated 13th May 1996, the respondents were restrained from evicting the petitioner from her official accommodation and the said interim order is in force as on today, and, for all these eight years, no adverse report is made by the respondents. Under the circumstances, I do not find any reason to modify or vacate the interim order passed by this Court on 13th May 1996.

5. In the result, the petition succeeds and is allowed. Rule is made absolute with no order as to costs.

(Anant S. Dave, J.)
(swamy)